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Supreme Court, U.S.
FILED

98 769 NOV 12 1998

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No. _____

In The

Supreme Court of the United States

October Term, 1998

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
Petitioner
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80 pp

QUESTION PRESENTED

Question presented for review is the validity of extra-judicial proceedings of private parties acting "entirely without jurisdiction and without color of authority" and a decree of transmogrification from a tort act into an eminent domain decree by the Supreme Court of Connecticut where there was no eminent domain case or controversy before the court within the meaning of § 2 of Article III of the Constitution for the "taking" of federal-aid/federal project/federal grant agreement/federal governmental (F.A.A.) physical invasion (airport navigational servitude allowing public right of access); that is repugnant to the Constitution, treaties and laws of the United States; that resulted in destruction of the use and enjoyment of private property; the federal question remains whether a governmental entity may constitutionally deny payment of just compensation to the property owner by destroying his remedy (Special Act #170 (1969), *Simmons v. Wetherall*, #163875 (1970)) to mere invalidation of the legislative supplement to Connecticut general statutes, 48-17a, b, c; 49 C.F.R. part 24 of federal regulations; and the due process and just compensation clauses of the Fifth and Fourteenth Amendments of the Federal Constitution.

PARTIES TO PROCEEDING

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Augustus J. Simmons, Landowner

Respondents:

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1. Where the command of the Constitution and all laws of the United States and regulations promulgated thereto, mandatory on all states no later than July 1, 1972 (P.L. 91-646, sec. 221) shall have the same force and effect in every organized territory within the United States, may not be set at naught, or its benefits (compensation) denied by state statutes or common law rules or by private parties acting as "the court" engaging in fraud, duress, deceit, coercion, collusion, bad faith, harassment, contemptuous disregard for the mandates of federal grant agreements, acting as court officers after discharge and withdrawal from representation are extremely serious constitutional and federal question violations for review by this court 6

2. The opportunity to be heard is an essential requisite of due process of law in judicial proceedings and as a state may not, consistently with the fourteenth amendment, enforce a judgment against a party without a hearing or an opportunity to be heard, a fundamental federal question is at issue 10

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3. Where it is exceedingly clear the extra-judicial proceedings of private parties were acting "entirely without jurisdiction and without color of authority" and the "damages" suit, #163875, in which it was mistakenly entered was still pending, the appellant/owner had the right to ask that the decree that had never been submitted to or heard by the Superior Court of competent jurisdiction should be stricken from court and land records as an impediment to a proper disposition of the suit. *Harris v. Hardeman*, 14 How. 334, 14 L.Ed. 444 12

4. Under the constitution, and by the express provision of 42 U.S.C. § 4655(2) of the Uniform Act, Connecticut general statute 48-17a, b, c, and, Special Act #170 (1969) of the Connecticut legislature, the United States and the Connecticut Department of Transportation, sponsor of the airport, are not entitled to possession of the land until the damages have been assessed and actually paid 15

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OPINION BELOW

The ORDER of the Supreme Court of Connecticut in *Simmons v. Wetherall*, et al. #163875, dated September 15, 1998 reads:

The motion of the plaintiff, filed August 5, 1998, "for permission to file motion to dismiss decrees of private counsel acting as 'the court,' denied by the court below due to previous rulings by the Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587," having been presented to the court is hereby ordered DISMISSED.

Said order is printed at Appendix A.

The motion of the plaintiff, dated August 5, 1998, to the Supreme Court for permission to file motion to dismiss, decrees of private counsel acting as "the court," denied by the court below due to previous rulings by the Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587 – is printed at Appendix B.

The motion of plaintiff, dated May 8, 1998, to disqualify, dismiss, "pack the bags" of the state attorney's office who are – or represent – the world record trespassers of thirty-five (35) years – and counting, from executing void warrants upon additional trespassing – is printed at Appendix C.

STATEMENT OF JURISDICTION

This court has authority under 28 U.S.C. § 1257 to review and correct the error of a state Supreme Court where facts averred in the motion filed shows extensive extrinsic fraud, by private parties acting as "the court,"

where no mesne process was initiated, argued, or transpired before the court of competent jurisdiction and the Supreme Court transgressed the due process clause to render a decree taking private property for public use by transmogrification of a private tort action, that did not confer constitutional, statutory or ordinance authority for the exercise of eminent domain, to deprive a person of a substantive federal right.

STATUTE AND CONSTITUTIONAL PROVISIONS

The Constitution of Connecticut provides that – "no person shall be deprived of life, liberty or property, without due process of law." Art. I § 11.

Amendment XIV, Constitution of the United States

" . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V, Constitution of the United States

" . . . nor shall private property be taken for public use without just compensation." 42 U.S.C. § 4655 (P.L. 91-646-January 2, 1971)

Requirements for uniform land acquisition policies; payments or expenses incidental to transfer of real property to state; payment of litigation expenses in certain cases.

Notwithstanding any other law, the head of a federal agency shall not approve any program or project which will result in the acquisition of real property on and after

the effective date of this title, unless he receives satisfactory assurances from such agency that –

(1) In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302, and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304.

Amendment of Section 4655

Public law 100-17, Title IV §§ 417, 418, April 2, 1987, 101 Stat. 256, provided that, to take effect on the effective date provided in regulations promulgated under Section 4633 of this title (as amended by Section 412 of Pub. L. 100-17), but not later than two years after April 2, 1987, this section is amended by designating existing provisions as Subsec. (a), in Subsec. (a) as so designated striking out "a state agency" the first place it appears and inserting in lieu thereof "an acquiring agency" and striking out "state agency" the second place it appears and inserting in lieu thereof "acquiring agency," and by adding at the end thereof the following new Subsec. (b):

"(b) For purposes of this section, the 'acquiring agency' means –

"(1) a state agency (as defined in Section 4601(3) of this title, which has the authority to acquire property by eminent domain under state law," and

"(2) a state agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation."

STATEMENT OF THE CASE

This case is an AIRPORT-related case that transcends back to a *1955* Federal-Aid Grant Agreement between federal and state agencies wherein the state agency (Connecticut Dept. of Transportation) was obligated under the grant agreement to acquire "satisfactory property interests" as defined in 14 C.F.R. § 152.3 for what would ultimately become a navigational servitude imposed upon the owner by the federal agency (F.A.A.) with the invasion, appropriation, installation on the surface of the real property, sophisticated navigational instrumentation controlling ingress and egress of air traffic at Bradley Airport, Connecticut's premier airport in the summer of 1962.

Starting on February 28, 1962 with a tortious course of conduct, the state agency initiated the first condemnation that was negated by the courts as arbitrary, unconstitutional with procedural problems (153 Conn. 351 (1966)) and was remanded.

In January, 1968 the state instituted condemnation proceedings a second time under Conn. general statute § 48-12, in lieu of C.G.S. § 15-79 and again the court ruled the proceeding "null and void". (160 Conn. 492 (1971))

During the 1969 session of the Connecticut Legislature, a special act was passed by the general assembly

allowing Augustus Simmons to sue the state for DAMAGES over "loss of use of land" arising out of the bumbling condemnation proceedings. On January 5, 1970 Plaintiff/Owner Simmons brought such a suit *Simmons v. Wetherall,* Docket #163875 which had several hearing dates scheduled that were all aborted. To date, damages have not been addressed and the action is still pending.

During the summer of 1974 the federal agency, F.A.A., without having paid any compensation, intended to upgrade the navigational servitude with the addition of a "middle marker" on private property and in lieu of negotiating a lease with the owner, enters into a lease with the sponsor of the airport, notwithstanding they had full knowledge that title reverted back to the owner on the land records on March 24, 1972 after the second condemnation was ruled null and void.

In December, 1977, plaintiff retained the firm of Rogin-Hirtle, Esq's to represent him upon scheduled days for hearings in damages before referee Shapiro and the very first act of private counsel was an attempt to give the state (and the F.A.A.) "complete insulation from and absolution from all of its sins" by invalidating the hearings in damages and for which a dismissal, discharge, in writing, was hand delivered on December 23, 1977. The discharge of 12/23/1977 was not sufficient to curb the tortious course of conduct.

Where the matter of subject matter jurisdiction and of indispensable parties was ARGUED before the court of competent jurisdiction, Hon. Dupont, A., on June 7, 1982 and the *STATE* vigorously and vehemently challenged the superior court with lack of subject matter jurisdiction and

the court, so recognizing, denied compensation from the slush fund to indispensable parties (VALENTE-ALLAIRE), yet, did not, would not set aside the void decree due to a supreme court ruling under *Simmons v. Wetherall*, 180 Conn. 587 (1980).

Where the "Slush Fund" monies were allowed to remain before the court from 1978 to 1991 before returning said monies to the state treasury, signifies FEDERAL QUESTION VIOLATIONS of the most severe nature, extending indefinitely the original unlawful, unconstitutional entry by the F.A.A. and the State of Connecticut.

REASONS FOR GRANTING THE WRIT

1. Where the command of the Constitution and all laws of the United States and regulations promulgated thereto, mandatory on all states no later than July 1, 1972 (P.L. 91-646, sec. 221) shall have the same force and effect in every organized territory within the United States, may not be set at naught, or its benefits (compensation) denied by state statutes or common law rules or by private parties acting as "the court" engaging in fraud, duress, deceit, coercion, collusion, bad faith, harassment, contemptuous disregard for the mandates of federal grant agreements, acting as court officers after discharge and withdrawal from representation are extremely serious constitutional and federal question violations for review by this court.

It is unmistakable from the plain language of 42 U.S.C. § 4655 that the states (and the federal agencies)

must comply with the land acquisition procedures specified in 42 U.S.C. § 4651 that will "result in" the acquisition of real property.

The legislative history of the act makes very clear that it is immaterial whether . . . federal funds contribute to the cost of the property. The controlling point is that the real property must be acquired for a federal or federal financially assisted program or project. H.R. Rep. No. 91-1656, 91st Cong. 2d sess. (1970), reprinted in 1970 U.S. code Cong. & Ad. News 5853. The Court of Appeals for the Fourth Circuit in *City of Columbia, S.C. v. Costle*, 710 F.2d 1009 (1983) found in relevant part those provisions require the grant recipient to attempt to acquire the real property interest through negotiations with the landowner, during which the grant recipient must offer the landowner the full appraised value of the interest.

Where the record is ultra clear the plaintiff/owner *rejected* a fraudulent offer by DISCHARGING the attorneys representing both plaintiff and defendants on December 23, 1977, refused to tender any deeds on April 19, 1978, where the INTENT was to force upon plaintiff an unsavory offer so that ESTOPPEL would preclude plaintiff from pursuit of damages for DECADES of trespassing – or – contest the validity of the taking, no matter how fundamental the defect in the proceedings, that upon rejection, the governing principle as ruled by *Harris v. L.P. & H. Constr. Co.*, 441 S.W. 2d 377 (Mo. App. 1969) is analoguous and applicable to the case at bar. The *Harris, supra* ruling: . . . the trespasser, having no right to remain on the land is required to cease his trespass and until he does so is liable for damages on a continuing basis. If the

trespasser is, however, a public utility an additional factor enters the picture, the welfare of the public. In that case if the trespassing structure is permanent, and if it is needed to serve the public or some portion thereof, then the landowner loses the right to force the removal of the structure and is entitled and required to recover his damages, past, present and future for the appropriation, in one action (but not necessarily in one count). Upon payment of those damages the public utility acquires an easement for the continued maintenance of the structure. See also *Mapco Inc. v. Williams,* 581 S.W. 2d 402.

That "the court" of private parties was acting entirely without jurisdiction or color of authority and with deliberate malevolence pursuing a course of conduct repugnant to the Constitution and Laws of the United States is in the record to wit: no assessment of damages; no appraisals as mandated by federal and state law; no negotiations; no written statements of compensation as mandated by federal and state law; no notice to necessary and indispensable parties; no service of process that would give the Superior Court jurisdiction; no judgment file, mandatory under practice book where title to property is involved; transmogrification of private tort action *Simmons v. Wetherall* #163875 does not confer subject matter jurisdiction; contemptuous disregard for C.G.S. § 13b-50, sec. (d) which mandates compliance with relevant federal statutes where federal-aid/federal projects are at issue; *ex parte* decree rendered *prior* to return day of first Tuesday of July 1978; illegal and malicious backdating to November 12, 1964 to circumvent the regulations promulgated pursuant to P.L. 91-646: the submission of

the rejected "slush fund," after discharge and withdrawal, to the Superior Court – that was returned to the state treasury on December 23, 1991 for reasons the Superior Court lacked jurisdiction of the subject matter and indispensable parties; "private parties" were not acting under color of or authority of any state statute or federal regulation; in bad faith, spite, ill-will and in retaliation for discharging counsel the owner/plaintiff was not listed as a necessary party for service; with deliberate malevolence, after discharge and withdrawal, placed encumbrances on the property to "freeze" the property without any proceedings before the court for resolution; engaged in a conspiracy and collusion against the owner with the concealment of land leases of Parcel "C" to the F.A.A. by the Connecticut Department of Transportation without notice or compensation was outright fraud; where deceit, duress, intimidation were exerted to stipulate to – violate the law – was fraud; where the MAJOR FEDERAL ACTION by a federal agency was never mentioned or included, never made a party to any of the proceedings, is fraud by concealment; where, after discharge and withdrawal, a devious scheme is employed to have the town of East Granby, who were never made a party to any action before the court, obtain monies from the "slush fund" for TAXES against the parcel invaded and appropriated by the F.A.A., forcing the owner to subsidize the navigational servitude against him; where the federal agency (F.A.A.) acknowledged putting the federal funds allocated under the grant-agreement – back into their general fund, yet, by collusion, conspiracy, bad faith enter into land-lease agreements with the sponsor

(Lease no. DOT-FA74NE-0368) with supplements is intentional and deliberate fraud.

Airport related federal questions affecting a multitude of people warrants review by this court.

2. The opportunity to be heard is an essential requisite of due process of law in judicial proceedings and as a state may not, consistently with the Fourteenth Amendment, enforce a judgment against a party without a hearing or an opportunity to be heard, a fundamental federal question is at issue.

The opportunity to be heard is an essential requisite of due process in judicial proceedings. *Windsor v. McVeigh*, 93 U.S. 274, 277; *Louisville & Nashville R.R. Co. v. Schmidt*, 177 U.S. 230, 236; *Simon v. Craft*, 182 U.S. 427, 436.

And a state may not enforce a judgment against a party without a hearing or an opportunity to be heard. *Pennoyer v. Neff*, 95 U.S. 714, 733; *Scott v. McNeal*, 154 U.S. 34, 46; *Coe v. American Fertilizer Works*, 237 U.S. 413, 423.

And where, in the case at bar, plaintiff/owner was not listed or named in the citation, and, where the indispensable parties that were listed in the citation (Vol. 59, p. 661-2) were never served or had notice of a purported return day of the first Tuesday of July, 1978 at 10:00 o'clock in the forenoon, so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.

It is plain that the practical effect of the judgment, decree, (waste paper) was to deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense. The plaintiff asserted an invasion of its substantive right under the federal Constitution to equality of treatment with the termination (discharge) of private negotiators. *Green v. Louisville & Interurban R.R. Co.*, 244 U.S. 499; *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441.

Where the above scenario was attained by an exercise of police power, in lieu of any state statute or federal regulation, the transgression of the due process clause of the Fourteenth Amendment would be obvious. *Ettor v. Tacoma*, 228 U.S. 148. The violation is none the less clear when that result is accomplished by the state judiciary, in the course of construing an otherwise valid (*Simmons v. Wetherall* #163875) legislative enactment, transgresses the due process clause.

Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464, 475-6.

The mere discretionary refusal of the highest state court to grant review of an extrajudicial decree, that was never submitted to or acted upon by the court of competent jurisdiction (Superior Court) does not provide an adequate state ground. In such circumstances, the decision of the lower (private parties) court, rather than the order of the highest court refusing review, becomes the

judgment of the "highest court of a state in which a decision could be had" for purposes of 28 U.S.C. § 1257, our jurisdictional statute. *Sullivan v. Little Hunting Park,* 396 U.S. at page 243. (Emphasis added.)

3. Where it is exceedingly clear the extra-judicial proceedings of private parties were acting "entirely without jurisdiction and without color of authority" and the "damages" suit, #163875, in which it was mistakenly entered was still pending, the appellant/owner had the right to ask that the decree that had never been submitted to or heard by the Superior Court of competent jurisdiction should be stricken from court and land records as an impediment to a proper disposition of the suit. *Harris v. Hardeman,* 14 How. 334, 14 L.Ed. 444.

Where a FEDERAL QUESTION is present involving the validity of the extra-judicial act by terminated, discharged, withdrawn private parties acting in bad faith and harassment of the owner as an extra-judicial court upon the "total and absolute absence of notice, constructive or implied, within any decent limits of law or reason" who knew or should have known that their malicious conduct violated the constitutional norm under the private #163875 tort action, "takes the federal grant/ federal project property of one and gives it to another by mere force, without right or authority," without just compensation "made and secured," deserves NOT the name of a judgment.

Speaking of determinations, without personal summons or arrest, it was said by Livingston, J. (*Aldrich v. Kinney*), 4 Conn. Rep. at 384 "Perhaps we possess the power, and I think we do, in extraordinary cases, and

where it is manifest the proceedings have been *ex parte*, of considering them as exceptions to the general law, and as not contemplated by the Constitution. Now, no violence is done to my understanding of this article (in the Constitution) in saying, that it does not embrace a judgment, which has been rendered against a party, to whom no opportunity was offered of contesting his adversary's demand, and who, instead of being defended by himself or by counsel of his own choice, had no other representative than an old blanket, or a log of wood. A sentence thus determined, in defiance of the maxim *"audi alteram partem"* deserves not the name of a judgment.

From *Windsor v. McVeigh*, 93 U.S. 274 (1876): "A proceeding" continued the court, "professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. it would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court."

From *Case v. Humphrey*, 6 Conn. 130, 139 (1826): "The deficiency of service in *Case v. Humphrey*, supra arose from an inadequate affidavit relative to the deportation of an indifferent person who left purported process with the defendant. Since there was no actual service of process, the ensuing judgment was "extra-judicial and void." 6 Conn. at 139. Because of this no determination by the court of the respective rights of the parties was entitled to legal validity, regardless of when the defendant appeared to apprise the court of lack of jurisdiction. Where a writ is a nullity, so that judgment thereon would be incurably erroneous, it is *de facto* abated, and even the explicit

admission of its validity by the party, never concludes the court."

Where the Supreme Court of Connecticut released a decision on May 13, 1980 under *Simmons v. Wetherall*, 180 Conn. 587 approving the transfer of the subject property to the state of Connecticut and the private parties (Rogin-Hirtle, Esq.) filed a motion with referee Shapiro for disbursement of (slush) funds with a letter dated July 16, 1980, that was received and answered by referee Shapiro on July 18, 1980, the last two paragraphs ILLUMINATE, ACKNOWLEDGE the lack of notice to indispensable parties, no return to the Superior Court and the obvious fact there was no referee submission to the Superior Court from which a proper appeal could be taken and where the Supreme Court of Connecticut, by statute, will only review FINAL JUDGMENTS, this court has the power to correct such glaring error with a reversal. Ex. # *Appendix D.*

Final judgment – 180 Conn. 587 (May 13, 1980)!!!

An appeal to this court may be taken only from a final judgment. General statutes § 52-263; Practice Book § 600; *Tough v. Ives*, 159 Conn. 605, 606, 268 A.2d 371; *Howarth v. Northcott*, 152 Conn. 460, 462, 208 A.2d 540. The absence of a final judgment goes to the *jurisdiction of the court*. Any appeal which is not from a final judgment must be rejected even though that issue has not been raised by the parties. *Hoberman v. Lake of Isles*, 138 Conn. 573, 574, 87 A.2d 137.

The test whether a judgment is "final" in the sense that an appeal may be taken from it, lies not in its nature,

for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties. *Banca Commerciale Italiana Trust Co. v. Westchester Artistic Works Inc.*, 108 Conn. 304, 307, 142 A. 838.

4. Under the Constitution, and by the express provision of 42 U.S.C. § 4655(2) of the Uniform Act, Connecticut general statute 48-17a, b, c, and, Special Act #170 (1969) of the Connecticut legislature, the United States and the Connecticut Department of Transportation, sponsor of the airport, are not entitled to possession of the land until the damages have been assessed and actually paid.

In this 1970 tort suit (*Simmons v. Wetherall*, #163875) brought for damages, the question is (was) – "WHAT WAS COMPENSATION?" It is in the power of the court and always has been to have the compensation settled once for all, and to get any benefit which the law attaches to such a method of ascertainment. Until this is done the possession is a "continual wrong" – a denial of due process which is required by the federal Constitution.

From *Bauman v. Ross*, 167 U.S. at page 599 reads: The phrase "and the land shall revert to the owners" is not happily chosen, for, the damages not having been paid, the title in the land has never passed out of them; but the clear meaning is that the title to the land shall be held to have remained in the owner as if no proceedings for condemnation had been had. This provision secures the owners from being compelled to part with their lands without receiving just compensation, and is within the constitutional authority of the legislature. *Baltimore &*

Susquehanna Railroad v. Nesbit, 10 How. 395; *Garrison v. New York*, 21 Wall. 196.

In *Chicago, Burlington & Quincy Railroad v. Chicago*, 166 U.S. 226, 241 it was held that "a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the UNITED STATES, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.

Just compensation means the full, perfect and exact equivalent, in money, for the property taken, *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326, 13 S. Ct. 622, 37 L.Ed. 463; *United States v. Miller*, 317 U.S. 369, 63 S. Ct. 276, 87 L.Ed. 336, *rehearing denied*, 318 U.S. 798, 63 S. Ct. 557, 87 L.Ed. 1162; 27 Am. Jur. 2d 53, eminent domain § 266. The United States Supreme Court to avoid use of the term "interest" has stated that where property is taken before payment is made just compensation includes an additional sum which is "an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking." *United States v. Klamath & Moadoc Tribes of Indians*, 304 U.S. 119, 123, 58 S. Ct. 799, 82 L.Ed. 1219; *Jacobs v. United States*, 290 U.S. 13, 17, 54 S. Ct. 26, 78 L.Ed. 142; *Seaboard Airline Ry. Co. v. United States*, 261 U.S. 299, 306, 43 S. Ct. 354, 67 L.Ed. 664.

Where Special Act #170 was enacted by the legislature in 1969, specifically for damages, for several years of

private property utilization unconstitutionally, without compensation, and the hiring out, retaining of private counsel (Rogin-Hirtle) on a restructured contingency basis was for specific hearing dates, already scheduled, which upon filing an appearance on December 13, 1977 were immediately INVALIDATED, DESTROYED and the only weapon at plaintiffs' command was a DISCHARGE, DISMISSAL on December 23, 1977, in writing, to destroy, remove from the arena corrupt and malevolent counsel that attempted to date a taking back to November 12, 1964, while simultaneously destroying the scheduled hearing dates for damages. The notice of discharge was an obvious rejection of the "PICK A NUMBER OUT OF THE SKY OFFER."

The invasion, appropriation and installation on the surface of plaintiff's Parcel "C" of federal navigational instrumentation by federal agency personnel is analogous to the appropriation of the use of private property in *United States v. Causby*, 328 U.S. 256 (1946). There the court found a "taking" in the government's use of air-space above the claimant's land as part of the flight pattern for military aircraft, thus destroying the use of the land as a chicken farm. "*Causby* emphasized that government had not 'merely destroyed property [but was] using a part of it for the flight of its planes.' " *Penn Central v. New York City*, 438 U.S. 128 (1946) quoting from *Causby*, 328 U.S. at 262-263, n.7. The F.A.A., through its Northeast Director of Airport Operations, Charles Waterman, acknowledged to plaintiff in 1980 that F.A.A. funds appropriated under the 9-06-009-5708 (1955) grant agreement were put back into their general fund.

The return to the state treasury, on or about December 23, 1991 of "slush funds" by the court of competent jurisdiction, Hon. Arnold Aronson, due to jurisdictional difficulties was tantamount to a repudiation, reversal of the Supreme Court edict which can only be reversed by the Supreme Court of the United States. Ex. # *Appendix E.*

CONCLUSION

Where it is readily apparent the *Simmons v. Wetherall,* #163875 Legislative Enactment is not a statute authorizing a valid exercise of eminent domain, and the Uniform Real Property Acquisition Act, and regulations promulgated thereto, apply to the necessary legal acquisition for the servitude imposed upon the owner by the federal agency, who hides behind unconstitutional leases from the state, and the controversy is of such broad and special importance to the public, and, where this unresolved controversy has had several previous petitions for certiorari submitted, a review by this court is again being appealed to.

Previous petitions to the supreme court include: 96-1349; 96-257; 94-1651; 92-1762.

Respectfully submitted,

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX "A"

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875

AUGUSTUS J. SIMMONS

v.

HORACE B. WETHERALL ET AL.: SEPTEMBER 15, 1998

ORDER

THE MOTION OF THE PLAINTIFF, FILED AUGUST 5, 1998, "FOR PERMISSION TO FILE MOTION TO DISMISS DECREE'S OF PRIVATE COUNSEL ACTING AS "THE COURT," DENIED BY THE COURT BELOW DUE TO PREVIOUS RULINGS BY THE SUPREME COURT IN *SIMMONS v. WETHERELL*, 180 CONN. 587", HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED**.

BY THE COURT,

/s/ Francis J. Drumm
CHIEF CLERK

NOTICE SENT: SEPTEMBER 15, 1998
AUGUSTUS SIMMONS,
PRO SE
LEWIS, LEWIS & FERRARO
MARC M. SCHINDELMAN,
P.C.
PEARL & GWOREK
ALAN N. PONANSKI,
ASSISTANT ATTORNEY GENERAL
OTTO P. WITT
CLERK, HARTFORD J.D. (CV70-0163875S)
WALTER E. BASS, JR.
RICHARD B. LASCHEVER
KATZ & SELIGMAN
RONALD A. STONE

APPENDIX "B"

SUPREME COURT

STATE OF CONNECTICUT

TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUDGES OF THE SUPREME COURT

DOCKET #163875

AUGUSTUS J. SIMMONS

VS. (AUGUST 5, 1998)

HORACE B. WETHERALL, et al

PLAINTIFF, AUGUSTUS SIMMONS, RESPECTFULLY SUBMITS:

MOTION TO THE SUPREME COURT FOR PERMISSION TO FILE MOTION TO DISMISS, DECREE'S OF PRIVATE COUNSEL ACTING AS "THE COURT," DENIED BY THE COURT BELOW DUE TO PREVIOUS RULINGS BY THE SUPREME COURT IN SIMMONS V WETHERALL, 180 CONN 587.

THE UNDERSIGNED RESPECTFULLY REPRESENTS:

1. He is a plaintiff in the above entitled action.

2. Plaintiff has filed motions to dismiss the decree's of private counsel with the Superior Court, Civil Side, on October 28, 1996; July 31, 1997; July 18, 1998 and with the Criminal Court on May 8, 1998 and all have been denied for reason to wit: "In light of the previous rulings in this matter no further hearings will be scheduled as requested in your letter." (Letter to Judge Berger and answer of Hon. John Langenbach – Ex. #1 & 1a).

3. Plaintiff submits five (5) copies of the most recent Motion to Dismiss dated July 17, 1998 for which permission is sought, in prayer, of this court for the court below to act upon. (Ex. #2)

4. Plaintiff submits five (5) copies of the most recent Motion to Dismiss, with exhibits, dated May 8, 1998, on the Criminal Side relative to Parcel "A" upon which no federal-aid is designated and no federal navigational instrumentation is located, specifically addressing TRESPASSING for which permission is sought, in prayer, of this court for the court below to act upon. (Ex. #3) NOTE – LISTED AS APPENDIX "C"

5. Plaintiff submits five (5) copies of order of Appellate Court order dated *April 3, 1992,* that is in direct conflict with State of Connecticut representations to the Superior Court on *June 7, 1982,* (Hon. Dupont, A.) wherein the Superior Court was challenged with lack of subject matter jurisdiction, consequently, compensation was DENIED to "indispensable parties" Valente and Allaire. Where ALL funds (legal or illegal) were subsequently returned to the state treasury on or about December 23, 1991, the order of the Appellate Court dated April 3, 1992 denying just compensation, ENJOINING PLAINTIFF FROM CLAIMS FOR JUST CONDENSATION, for thirty five (35) years of trespassing by state and federal agencies is absolute, unequivocal unconstitutional justice. (Ex. #4)

6. Where there was deliberate malevolence associated with the citation required by § 16-37 to summon the necessary parties to appear in court, and the owner was intentionally and maliciously omitted from the citation

and the citation is the legal fact upon which the decree by discharged parties rest, a proper citation is essential to the validity of the appeal and the jurisdiction of the court. Where NO HEARINGS were ever scheduled or held by the Superior Court FOR THE TAKING OF REAL PROPERTY – FOR FEDERAL PROJECTS and the Supreme Court can only consider appeals from final judgments, the ruling under 180 Conn 587 is subject to collateral attack under the *Windsor v McVeigh*, 93 U.S. 274, 23 LEd. 914 theory that: "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have an inherent power to deny all right to defend an action and to render decrees without any hearing whatever is in the very nature of things to convert the court exercising such authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

Wherefore, the undersigned requests, in good faith, the Supreme Court grant permission to file the Motions to Dismiss, be heard by the court below

Respectfully submitted,

/s/ Augustus J. Simmons

Augustus J. Simmons, Plaintiff
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff, Augustus J. Simmons, hereby certifies a copy and exhibits of this Motion for Permission to File has been sent to:

Alan N. Ponanski, Asst. Atty. General
Office of Attorney General
55 Elm St.
Hartford, CT 06106

John Malone, Asst. State's Atty.
GA 13 111 Phoenix Ave.
Enfield, CT 06082

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

January 3, 1997

Hon. Marshall K. Berger, Jr.
95 Washington Street
Hartford, CT 06106

EXHIBIT #1

Re: *Simmons v Wetherall*, #163875

Dear Judge Berger,

Pursuant to the recommendation of your assistant that a letter be submitted to your attention that the Hon. Julia Aurigemma – *REFUSED* – to hear plaintiffs *"MOTION TO DISMISS, DISSOLVE, SET ASIDE REAL PROPERTY*

ATTACHMENTS UNDER DOCKET #163875" at short calendar #7 (#19) on December 2, 1996, a copy of transcript is attached to that effect.

Under the due process and just compensation clauses of the Constitution, plaintiff is entitled to the rational administration of justice and this letter is in pursuit of the denial of such rational administration of justice.

The *Simmons v Wetherall,* #163875 file has become exceedingly voluminous, for several reasons, primarily because it is a 1970 "damages" action *AGAINST* the state that has never been addressed and the attempt to transform the private tort action into a substitute for federal regulations that the state (Department of Transportation) is obligated to proceed under pursuant to grant agreement 9-06-009-5708 (1955) and C.G.S. 13 b-50, sec. (d) for federal project real property acquisition.

Plaintiff, Augustus J. Simmons, delayed this letter of request until the holiday period of Christmas and New Years has passed, however, the urgency of acting on this matter needs no further explanations or submissions beyond the contents of the motion,

The court's attention is called to the submissions to the clerk's office on December 2, 1996 of *DISSOLUTION OF ATTACHMENTS PURSUANT* to C.G.S. § 52-327 to be made a part of The #163875 file, in addition to a MOTION FOR LEAVE TO FILE A PETITION TO ANNUL ALL SANCTIONS ASSOCIATED WITH THREE (3) DECADES OF EMINENT DOMAIN MALFEASANCE, in federal court, submitted for the #163875 file on December 20, 1996, copies of which are in the possession of A.A.G. Arnold Shimelman and Otto Witt, Esq. whose appearance

in this matter was put "IN QUESTION" by Shimelman shenanigans.

Plaintiff Simmons requests the presence of Atty. Otto Witt at all hearings, for continuity purposes, for damages that plaintiff is constitutionally entitled to (6, Nichols, eminent domain, section 26, 42 [1]; *Trumbull v Ehrsam*, 148 Conn. 47, 55-56; *Simmons v Wetherall* #163875), the most recent motion filed on April 18, 1996 for referral to three (3) referees and "REFILED" in June 1996, per recommendation of the Office for Appeals.

Without question, just compensation must be applied to each and every lien-holder on the land records (C.G.S. § 48-21), *FIRST*, and the actions of the court has been and continues to impose cruel, unusual, extraordinary hardship, in total disregard of the provisions of the Uniform Real Property Acquisition Act (P.L. 91-646-(1971)), mandatory on all states no later than July 1, 1972.

In as much as Hon. Aurigemma, J., "passed the buck" on this matter to the presiding judge (Hon. Berger, M.), a scheduling for a hearing and decision, as promptly as the schedule will permit, will be appreciated.

Yours truly,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff, Augustus J. Simmons, hereby certifies that a copy of this letter to presiding Judge Berger, M., with a copy of transcript (12/2/96), Docket #163875, has been sent, parcel post, first class, this 3rd day of January, 1997 to:

Arnold Shimelman, A.A.G.
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

EXHIBIT 1a

SUPERIOR COURT
STATE OF CONNECTICUT

CHAMBERS OF
JOHN J. LANGENBACH
ADMINISTRATIVE JUDGE

95 WASHINGTON STREET
HARTFORD,
CONNECTICUT 06106

January 31, 1997

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Mr. Simmons:

Judge Berger referred your letter of January 3, 1997 to me.

In light of the previous rulings in this matter no further hearings will be scheduled as requested in your letter.

Very truly yours,

/s/ John J. Langenbach
John J. Langenbach
Administrative Judge

JJL/sb

EXHIBIT #2

No. CV-70-163875	:	SUPERIOR COURT
	:	
AUGUSTUS J. SIMMONS	:	JUDICIAL DISTRICT OF
	:	HARTFORD/NEW
VS.	:	BRITAIN AT HARTFORD
HORACE B.	:	
WETHERALL, ET AL.	:	JULY 17, 1998

MOTION TO DISMISS FOR *FRAUD, DURESS, DECEIT COERCION,* AND CONTEMPTUOUS DISREGARD OF PRACTICE BOOK *RULE 1.16* RE DISMISSALS/DISCHARGES.

FEDERAL STATUTE AND CONSTITUTION VIOLATION

All of plaintiffs motions, actions, claims derive from a "common nucleus of operative fact." *United Mine Workers v Gibbs*, 383 US 715, 86 S.Ct. 1130, 16 LEd. 2d 218 (1966). They all arise from the same transaction or occurrence – i.e., the invasion of the surface and construction of navigational aids under federal-aid project 9-06-009-5708 (1955) on plaintiffs Parcel "C" wherein the state and federal agency (F.A.A.) entered into agreement to acquire, in fee simple, certain real property interests, pursuant to federal regulations that imposed upon state defendants a duty, no later than July 1, 1972, to comply with the regulations promulgated pursuant to the provisions of Title III of the Uniform Real Property Acquisition Act. P.L. 91-646 (1971). 42 USC §§ 4601-4655.

INDISPENSABLE PARTIES

The first question which will arrest the attention of the court, on the face of this record, is that of jurisdiction.

It requires no argument to show that the original complaint (Docket #163875) could not possibly be sustained for want of indispensable parties.

Where the proceedings are, were, so completely at war with all the rules of law and all the principles which guide courts of justice in the discharge of their duties, the want of jurisdiction over parties, in whose absence no decree could be pronounced, must of necessity cause the reversal of the decree and dismissal.

In this case, the indispensable parties are so essential to the merits of the question, and may be so much affected by the decree, that the court cannot proceed to a final decision of the cause till they are parties. In truth, indispensable parties were not parties to the original complaint. They had no right to answer the original complaint, or make defence against it, and of course no decree could be made against them upon that complaint.

Indispensable parties are "[p]ersons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Shields v Barrow,* 58 US (17 HOW.) 130,146. In *Mallow v Hinde,* 12 Wheat 198 the court observed when speaking of a case where an indispensable party was not before the court, "we do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction; we put it on the ground that no court can adjudicate directly upon a person's right,

without the party being either actually or constructively before the court."

This court has repeatedly had occasion to determine that, where necessary parties to complaints could not be brought into court, by reason of the constitutional limitation on their jurisdiction, the action, not the suit, must be dismissed.

Court records show a transfer of funds back to the state treasury on or about December 23, 1991 that should dispel any validity claims by defendant.

CONNECTICUT PRACTICE BOOK RULE 1.16

A client has a right to discharge a lawyer at any time, with or without cause and the first of two, handwritten, hand delivered discharges was made on the "Rogin-Hirtle" law firm, acting as "the court" on December 23, 1977, citing several reasons, which, in the normal case would have terminated the attorney/client relationship.

The extra-judicial court of Rogin-Hirtle, esq's were replaced on January 4, 1978 with Robert King, esq., who was not permitted to represent plaintiff.

A *second* dismissal/discharge was submitted to the Rogin-Hirtle law firm on April 12, 1978 with copies of notice also to referee Shapiro and A.A.G. Fred Neusner.

When the Rogin-Hirtle firm was rebuffed on tendering any deeds on April 19, 1978, a WITHDRAWAL was submitted to plaintiff and on April 20, 1978 plaintiff was made defendant in a lawsuit for counsel fees with the filing on the public land records at Vol. 59, p. 419 of an P.J.R. attachment.

To strike out, disregard the entire substance and prayer of a tort action (Docket #163875), and, insert a new case by way of transmogrification, leaves the record unnecessarily incumbered with the original proceedings, increases expenses and complicates the suit. To insert a wholly different case is not properly an amendment, and should not be considered within the rules on that subject.

SPECIFIC ACTS of *FRAUD, DURESS, DECEIT, COERCION* relied on to support motion to dismiss:

Where, because of the FRAUD and DECEPTION practiced against owner, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest, no adversary trial or decision before the court of the subject matter of the suit.

Where, Rogin-Hirtle, esq's were representing both plaintiff and defendant, it was extremely harmful error in permitting the defendant to bring an entirely new and different action against the defendant under pretext of amending (combining) two (2) ejectment actions of plaintiff, one of which went to judgment 12 months earlier; two injunction actions by defendant; and one tort action (Docket #163875) into an eminent domain exercise.

Where, fraud, duress, deceit, corrupt practices were engaged in by the Rogin-Hirtle law firm to coerce plaintiff to sign WITHDRAWAL forms on December 12, 1977, prior to filing an appearance on December 13, 1977 for two (2) Federal Court Actions, Docket #H 74-148 and #14806, a civil rights action remanded by the second circuit under the pretense no offer could or would be made until withdrawals are signed was acting in bad faith and a pre-determined calculated exercise designed

to deprive plaintiff of just compensation under federal statutes and the Constitution.

Where, Rogin-Hirtle, esq's are retained specifically for scheduled hearing dates in damages on a restructured contingency basis and intentionally, maliciously disregard the purpose for which the firm was retained, depriving plaintiff of constitutionally mandated just compensation, justified discharge.

Where, appraisals are mandatory under federal and state law to establish fair market value, the failure to comply with such pre-requisite, before negotiations, was a proper reason (listed) in the discharge notice of 12/23/1977.

Where, written statements of compensation are mandatory under federal and state law, must be submitted to the court, town clerk and indispensible parties, before title can be acquired (*Stocker v Waterbury*, 154 Conn. 446, 451, 226 A2d 514), was sufficient cause in the discharge notice of 12/23/1977.

Where, after two (2) discharges, a withdrawal on 4/19/78 from all proceedings, a lawsuit against plaintiff for counsel fees on 4/20/78, the Rogin-Hirtle law firm, without any authority, standing, right to represent, submit monies to the court, file supplemental, detrimental encumberances [sic] on the land records that was "waste paper," not having notified or served indispensable parties; with deliberate malevolence and malice, intentionally do not list the owner for notice or service; who impose upon the court clerk (Thomas Abraham) to affix a signature to documents dated June 2nd & 5th, 1978 that

had a return day of the first Tuesday of July, 1978 is willful, intentional, deliberate fraud.

Where, not only federal-aid, but, a federal project of major high-profile importance to the airport determines the procedures and the law to be applied to the case at bar, and, the Rogin-Hirtle law firm, also acting as agent for the state, knowingly, intentionally, with malice, deliberately ignore and violate the controlling federal laws, plaintiff, in order to protect his federally protected rights, had no alternative but to reject the fraudulent offer, refuse to tender any deeds, and were told – go pound sand – on the beach – without a paddle.

The determination of the proper rate of interest, being a part of just compensation, never discussed, no record of it even being considered, does not meet or satisfy the constitutional requirement of just compensation, was knowingly, intentionally, with malice, bypassed.

The submission of a highway taking map Vol. 17, p. 854 for Parcel "D" of 1. 12 acres for Route #20, on the public land records of East Granby, CT, after discharges and withdrawal by the Rogin-Hirtle law firm, without any assessment filed with the court as required by CGS § 13A-73(b) is what the term implies "highway robbery."

SUPREME COURT – HARMFUL – ERROR

Where, under repeated construction of laws of a state, consistently acted upon in administrative practice, a suit in tort (Docket #163875) was the appropriate and only remedy against two (2) unconstitutional condemnations, violative of the just compensation clauses of the 5th

and 14th Amendments of the Constitution, in addition to the equal protection clause of the Fourteenth Amendment, and the Supreme Court overruling its earlier decision (160 Conn. 492 (1971)), denies this remedy without any record before the court that it was even heard or considered, the purported judgment, decree, piece of paper, violates due process of law in its primary sense of an opportunity to be heard and to defend one's substantive right. *Brinkerhoff-Faris Co. v Hill,* 281 US 673.

Where, on the face of the record there was no assessments of land value, where federal grant agreements are in existence and controlling; where, there are no written statements of compensation, that are mandatory under federal regulations and state statutes; where, no assessment of damages, for which Docket #163875 remains before the court; where, there is no judgment file for the reviewing court to examine in such a high profile case; – such noncompliance, such discrimination violated the equal protection clause of the Fourteenth Amendment. *Brinkerhoff-Faris Co. v Hill,* 281 US 673.

Where, under the due process clause – "the use to be made of the land taken is necessarily a factor to be considered in the application of the rule" under 42 USC § 4655, the controlling point is that where the intended use is for a federal or federally assisted program that will "result in" the acquisition of real property, compliance with the plain language of § 4655 of the Uniform Real Property Acquisition Act is required whether or not- . . . federal funds contribute to the cost of the real property. *City of Columbia, S.C. v Costle,* 710 F2d 1009 (1983).

RELIEF REQUESTED

Because the decree of private parties in this case (Docket #163875) was void, the encumberance [sic] in which it was mistakenly entered was still pending, and the appellant had the right to ask that the entry of such a decree as had been rendered should be stricken from the records of the court and the town clerk, as an impediment to a proper disposition of the suit.

While such an impediment existed, the continued refusal of the court to vacate the void decree was a final order determining the rights of the parties in that suit.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons, Plaintiff
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION OF SERVICE

Plaintiff, Augustus Simmons, hereby certifies service by first class mail, postage prepaid, this 17th day of July, 1998 to:

Alan N. Ponanski, Asst. Atty. General
Office of Attorney General
55 Elm St.
Hartford, CT 06106

John Malone, Asst. State's Atty.
GA 13 111 Phoenix Ave.
Enfield, CT 06082

Rogin, Lassman, Hirtle, esq's
City Place
Hartford, CT 06106

James F. Sullivan, Commissioner
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131-7546

Robert S. Bartanowicz
Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

NO. A.C. 10918

AUGUSTUS J. SIMMONS	: APPELLATE COURT
	:
V.	: STATE OF CONNECTICUT
HORACE B. WETHERELL	:
ET AL.	: APRIL 3, 1992
	:

ORDER

THE MOTION OF THE DEFENDANT-APPELLEE STATE OF CONNECTICUT, FILED JANUARY 31, 1992, FOR SANCTIONS, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

PER ORDER OF THE APPELLATE COURT, THE PLAINTIFF, AUGUSTUS J. SIMMONS, IS HEREBY ENJOINED FROM FILING ANY APPEALS OR OTHER PLEADINGS IN THIS COURT CONCERNING THE SAME CLAIMS AS THOSE WHICH HAVE BEEN LITIGATED OR MIGHT HAVE BEEN LITIGATED, IN THE CONNECTICUT SUPERIOR COURT CASES REFERRED TO AS *SIMMONS V. WETHERELL*, DOCKET NO. 163875 (SUPERIOR COURT AT HARTFORD, JAN. 4, 1978, AS MODIFIED JUNE 2, 1978), AFF'D 180 CONN. 587 (1980), AND ALL THE CASES CONSOLIDATED THEREWITH, INCLUDING ANY CLAIMS OF ALLEGED HARM RELATING TO THE PLAINTIFF'S OWNERSHIP, AT ONE TIME, OF THE PARCELS OF LAND IN THE TOWN OF EAST GRANBY AS DESCRIBED IN THE ORIGINAL AND SUPPLEMENTAL JUDGMENTS IN *SIMMONS V. WETHERELL*, DOCKET NO. 163875, *SUPRA*, AND ALL CASES CONSOLIDATED THEREWITH.

NOTHING IN THIS ORDER SHALL BE CONSTRUED TO DENY PLAINTIFF ACCESS TO THE CONNECTICUT SUPREME COURT OR TO THE UNITED STATES SUPREME COURT REGARDING THIS COURT'S ACTIONS CONCERNING THIS MATTER.

BY THE COURT,

/s/ ANN M. GANNUSCIO
ASSISTANT CLERK – APPELLATE

NOTICE SENT: 4/3/92
AUGUSTUS J. SIMMONS, PRO SE
ARNOLD SHIMELMAN, ASSISTANT ATTORNEY GENERAL
CLERK, SUPERIOR COURT, HARTFORD, CV70 163875
HON. MARY R. HENNESSEY

APPENDIX "C"

No. CR97-106221
No. CR97-0104930
No. CR97-0105048

SUPERIOR COURT

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS

JUDICIAL DISTRICT OF HARTFORD/ NEW BRITAIN AT ENFIELD

MAY 8,1998

Attn.: Chief Clerk

MOTION TO DISQUALIFY, DISMISS, "PACK THE BAGS" OF THE STATE ATTORNEY'S OFFICE WHO ARE – OR REPRESENT – THE WORLD RECORD TRESPASSERS OF THIRTY-FIVE (35) YEARS – AND COUNTING, FROM EXECUTING VOID WARRANTS UPON ADDITIONAL TRESPASSING.

It follows that where the court has no jurisdiction of the real property, or the person(s), trespass will lie against the officer for a seizure of the owner under the pretense of a purported judgment that is not voidable, not void, but *NON-EXISTENT* on the court records.

The court and the officer are all trespassers. *Wise v Withers*, 7 U.S. 331, 2 L.Ed 457.

RECORD

1. A quarter of a century ago, the courts, federal and state, the Connecticut legislature, the land records clearly established trespassing (failure to pay compensation) had transpired the previous ten (10) years.

The Second Circuit Court of Appeals (federal) 472 F2d 509 (1973).

The Connecticut Supreme Court (state) 160 Conn. 492 (1971).

The Connecticut legislature enactment of Special Act # 170 (1969).

The public land records of the town of East Granby, CT wherein all previously condemned real property revert and pass to and vest in plaintiff at Vol. 52, page 242-243 (March 24, 1972) (Defendant Ex. #1).

2. The actor's failure to remove from land in the possession of another a structure, chattel, or other thing which he has tortiously erected or placed on the land constitutes a continuing trespass for the entire time during which the thing is wrongfully on the land and confers on the possessor of the land an option to maintain a succession of actions based on the theory of continuing trespass or to treat the continuance of the thing on the land as an AGGRAVATION of the ORIGINAL TRESPASS.

3. The AGGRAVATION of the original trespass is illuminated by the twice (2) discharged private counsel (Rogin-Hirtle), acting as judicial officers, UNSUCCESSFUL exploit to acquire title to the property, with a court reporter making a record of proceedings (Defendant Ex. #2).

4. The AGGRAVATION of the original trespass is extended with the submission of a WITHDRAWAL to the owner on April 19, 1978 (Defendant Ex. #3).

5. The AGGRAVATION of the original trespass is further extended with the private counsel sending sheriff

after owner for counsel fees, recording same on East Granby, CT public land records at Vol. 59, page 419 (Defendant Ex. #4).

NO MESNE PROCESS – NON-EXISTENT JUDGMENT

6. The AGGRAVATION of the original trespass is manifest from the submission by the (honest) Chief Clerk of the Superior Court in Hartford in August, 1979 of the citation *Shelton v Wolthausen,* 80 c 599 to the Hon. John Daly making evident there were *NO* purported judgments or proceedings, of any nature, before the court. (Defendant Ex. #5 & #5a). Linda (Cohen) was first assistant in 1979 to Chief Clerk Lucian (Jachomovitz). As the "undated" note indicates, *NO* monies was paid to "Rogin-Hirtle-Salzman" esquires. This notice preceded *Simmons v Wetherall,* 180 Conn. 587 (1980).

7. The Superior Court record shows Hon. Judge Arnold Aronson returning the funds before the court back to the state treasury on December 23, 1991 for reasons the court lacked subject matter jurisdiction and no notice or service was ever made on the SEVERAL necessary parties.

NO NOTICE – NO SERVICE

8. The AGGRAVATION of the original trespass is manifest from a letter to Jason Pearl, Esq. (representing Rogin-Hirtle-Salzman) from referee Shapiro, dated July 18, 1980, calling attention to the fact "SEVERAL" encumberances [sic] are on the land records prior to the date of the Salzman attachment, acknowledging the fact the

Superior Court had no proceedings before it, acknowledging that notice to the various creditors may be (IS) necessary. This letter was post *Simmons v Wetherall,* 180 Conn. 587. (Defendant Ex. #6)

LAND RECORDS – EAST GRANBY, CT 1996

9. The AGGRAVATION of the original trespass is manifest from the recording on the public land records that *NO* compensation has been paid to one of several lien-holders (Thomas P. Byrne, Esq.) whose lien dates back to 1974, a full quarter of a century, and evidenced at Vol. 112, page 001-008 (Defendant Ex. #7). Connecticut eminent domain statute C. G. S. § 48-21 mandates all lien holders must be paid first, *BEFORE* the owner.

COMPENSATION

10. Failure to pay compensation is *TRESPASSING.* "Adequate provision for obtaining compensation" must exist prior to any seizure, condemnation, physical intrusion, constitutional deprivation, *Cherokee Nation v Southern Kansas* Ry., 135 U.S. 641, 659, 10 S. Ct. 965, 34 L.Ed 295 (1890); see *Bragg, v Weaver,* 251 U.S. 57, 62, 40 S. Ct. 62, 64 L.Ed. 135 (1919); *Pumpelly v Green Bay Co.,* 80 U.S. (13 Wall) 166, 175, 20 L.Ed. 557 (1871).

11. Damages, a vested property right (see *Ettor v Tacoma,* 228 U.S. 148), having accrued over the past thirty-five years, and CONTINUING, were cast in complaint in tort (Docket #163 875), on file with the Superior Court in Hartford, cannot be destroyed or ignored by the state attorney's office, or any other judicial officer, without a

violation of rights guaranteed by the Fourteenth Amendment.

CONCLUSION

12. The allegations and exhibits do set forth an undeniable, unquestionable, TRESPASS.

NOTICE

13. On April 11, 1998 correspondence was addressed to Robert Juliano, Director, Airports and Ports concerning this trespassing with copies to several necessary parties and *ERROR was* made at the very top of the page with a date of April 11, 1997. Copies of this motion are being sent to the same parties requesting a *CORRECTION* of the date to *April 11, 1998.*

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

Copies to:

David R. Hinson, Administrator
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, D.C. 20591

Robert S. Bartanowicz, Regional Director
12 New England Executive Park
Burlington, MA 01803

Vincent A. Scarano, Director of Airports, N.E.
12 New England Executive Park
Burlington, MA 01803

William Sullivan, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Alan N. Ponanski, Asst. Atty. Gen.
55 Elm St., Third Floor Annex
Hartford, CT 06106

Otto Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Chief Clerk, Superior Court
Michael DiDonato (to be made part
85 Washington St. #163875 file)
Hartford, CT 06106

State Attorney's Office
State of Connecticut Court House
Enfield, CT 06082

Rogin, Nassau, Caplan, Lassman & Hirtle
1 CityPlace
Hartford, CT 06103

EXHIBIT #1

VOL 52 – PAGE 242
STATE OF CONNECTICUT

No. 156899

AUGUSTUS J. SIMMONS, OF WINDSOR	:	SUPERIOR COURT
VS.		
FRANK C. PARIZEK, OF WILLINGTON; and EDWARD J. COADY, OF WEST HARTFORD; and KINGSLEY GILLESPIE, OF STAMFORD; and HUGH C. CURRAN, OF BRIDGEPORT; and ARTHUR S. SACHS, OF ORANGE; and E. DONALD WALSH, OF WATERTOWN, all duly appointed members of the Aeronautics Commision of the State of Connecticut	:	COUNTY OF HARTFORD
	:	APRIL 16, 1971

– JUDGMENT

PRESENT HON. JOHN CLARK FITZGERALD, JUDGE:

This action, by Writ and Complaint, dated July 15, 1968, as amended December 11, 1968 and December 20, 1968, and by a Substituted Complaint, dated June 4, 1969, claiming a temporary and permanent injunction and other relief, as on file, came to this Court on the first Tuesday of August, 1968, when the parties appeared, and thence to September 18, 1969 when the plaintiff filed his Reply to the defendants' Answer and Special Defense, and the parties were at issue as on file.

Said cause thence came to the present time when the Court entered Judgment in accordance with paragraphs 2 and 5 of the plaintiff's Substituted Complaint.

Whereupon, it is adjudged that the Certificate of Taking filed in the Land Records of the Town of East Granby in Volume 46, Page 113, is null and void, and that

It is further adjudged that title to the premises described in the aforesaid Certificate of Taking, as owned by the plaintiff, revert and pass to and vest in the plaintiff.

/s/ Fitzgerald
Judge

STATE OF CONNECTICUT :
: ss
Hartford County, :

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County.

HEREBY CERTIFY the forgoing to be a true copy of and record, of record, of the Judgment in No. 156899, Augustus J. Simmons vs Frank C. Parizek, et al.

[SEAL]

IN TESTIMONY WHEREOF, I have illegible my hand and the seal of said Supreme Court at Hartford, in

said County, this 7th day of September, 1971

/s/ Thomas H. Abraham
Clerk

JD 3049 REV 7-71

Received March 24, 1972 at 2:35 P. M.

By /s/ Mariam W. Viets
Town Clerk

Vol. 52 – Page 243

EXHIBIT #2

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN, LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons
John Kataja
David Salzman, Esq.
Stephen Silverman, Esq.
Ned Rogin, Esq.
Phillip Robbins, Esq.
F. D. Neusner, Esq.
Dennis Cemeriva, Esq.
Robert L. Hirtle, Esq.

Reported by:
William G. Crampton
Certified Shorthand Reporter
Notary Public

* * *

[p. 8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the highest and utmost respect for Referee Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before there will be any Goddamned Closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [p. 9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NUESNER: Is that a definite negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a. m. the closing was adjourned).

* * *

EXHIBIT #3

NO. 202121-8 STATE OF CONNECTICUT VS. AUGUSTUS J. SIMMONS	:	SUPERIOR COURT HARTFORD COUNTY APRIL 19, 1978

NO. 199230-9
AUGUSTUS J. SIMMONS
VS.
SAMUEL KANELL, ET AL

NO. 140965
STATE OF CONNECTICUT
VS.
ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS
and
CHARLES SIMMONS

NO. 162923
AUGUSTUS J. SIMMONS
VS.
FRANK C. PARIZEK, ET AL

NO. 163875
AUGUSTUS J. SIMMONS
VS.
HORACE B. WETHERELL, ET AL

MOTION TO WITHDRAW AS COUNSEL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert L. Hirtle, Jr.
ROGIN, NASSAU, CAPLAN, LASSMAN AND HIRTLE
/s/ David B. Salzman
DAVID B. SALZMAN, ESQUIRE
/s/ Stephen Silverman
STEPHEN SILVERMAN, ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

_____
Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle, Jr.
Robert L. Hirtle, Jr.

EXHIBIT #4

EX PARTE

DAVID B. SALZMAN, ET AL	:	SUPERIOR COURT
	:	HARTFORD COUNTY
VS.	:	APRIL 20, 1978
AUGUSTUS J. SIMMONS	:	

ORDER GRANTING PRE-JUDGMENT REMEDY
(WITHOUT HEARING)

The Application and Affidavit of Plaintiff(s) for Pre-judgment Remedy pursuant to C.G.S. Section 52-278a et seq. as amended, having been presented to the Court and there being probable cause to sustain the validity of the Claim of the Plaintiff(s), it is hereby ORDERED that the Plaintiff(s) may

(a) attach to the sum of $105,000.00 the real estate standing in the name of the Defendant(s) Augustus J. Simmons ~~located at~~ as described in Schedule A attached hereto.

~~b. garnishee~~

~~as the agent, trustee and debtor of the Defendant(s) and ha concealed in hands, the goods, effects and estate of the Defendant(s) and indebted to the Defendant(s).~~

~~c. cause to be replevied to the Plaintiff(s) the certain goods and chattels described in Exhibit attached hereto and made a part hereof.~~

Dated at Hartford, CT this 20th day of April 1978

JUDGE

EX PARTE
P.J.R. NO.

TO THE **SUPERIOR**
THE COUNTY OF

APPLICATION FOR PRE-JUDGMENT REMEDY

COURT TO BE HELD IN **HARTFORD**, IN AND FOR

The undersigned represents:

1. That **DAVID B. SALZMAN, STEPHEN SILVERMAN and ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE** is about to commence an action against **AUGUSTUS J. SIMMONS** of **580 Park Avenue, Windsor, CT** pursuant to the attached proposed unsigned Writ, Summons, Complaint and Affidavit.

2. That there is probable cause that a judgment will be rendered in such matter in favor of the applicant and to secure such judgment the applicant seeks an order from this court directing that the following prejudgment remedy be issued to secure the sum of **$105,000.00**

a. To attach the following described real property of the Defendant(s) to Wit:
See attached description (Schedule A)

b. To garnishee , as he is the agent, trustee, debtor of said Defendant and has concealed in his hands the goods, effects and estate of said Defendant and is indebted to him.

c. To replevy property described in Exhibit

d. To enjoin the said

his/her/their agents, servants or employees from selling, transferring or encumbering any interest in and to the above-described real property pending further order of this court.

PLAINTIFFS

By /s/ Jason E. Pearl
Jason E. Pearl Attorney

AFFIDAVIT IN SUPPORT OF P.J.R. APPLICATION

I, the undersigned, do make affidavit and say that there is probable cause to sustain the validity of the Plaintiff's claim and

1. That the prejudgment remedy requested is for an attachment of real property; or
2. That there is reasonable likelihood that the defendant:

[ ] a. Neither resides in nor maintains an office or place of business in this state and is not otherwise subject to jurisdiction over his person by the Court;

[ ] b. Has hidden or will hide himself so that process cannot be served on him;

[ ] c. Is about to remove himself or his property from this state;

[ ] d. Is about to fraudulently dispose of or has fraudulently disposed of any of his property with intent to hinder, delay or defraud his creditors;

[ ] e. Has fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of his debts;

[ ] f. Has stated he is insolvent or has stated he is unable to pay his debts as they mature.

I base this upon the following Statement of Facts:

ffiant [sic] is an attorney at law who rendered legal services together with the ther [sic] plaintiffs for the defendant totaling $104,505.00. Defendant has not aid [sic] the same, despite demand.

/s/ Illegible
Plaintiff-Competent Affiant

Subscribed and sworn to before me this 19th day of April, 197___

/s/ Illegible
Commissioner of The
Superior Court

EXHIBIT 5

Law Offices

Jason E. Pearl

19 SOUTH HIGH STREET
POST OFFICE BOX 183

New Britain, Connecticut 06050

Jason E. Pearl
Kenneth J. Spreyer

Telephone
(203) 229-4603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
Vs: Augustus Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of having to "reargue" your prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl
Jason E. Pearl, Esq.

JEP/ck
1888

Hearing set up for
9/12/79 at 2:00 p.m.

EXHIBIT #5a

Linda

Based on SHELTON v WOLTHAULEN, 80 C 599 (furnished by Lucian) I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks

EXHIBIT #6

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAWER N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion For Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty.

Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd
cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

EXHIBIT #7

December 1, 1996

VOL. 112 PAGE 001

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject matter of this letter pertains to: *DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.* -

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumberances [sic] be endorsed on the record of such attachment with the words *"DISCHARGED BY OPERATION OF LAW"* pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall,* CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. That there was *NO* officer's service on any parties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and *NO* compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumberance [sic] at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95; Vol. 58, p. 221; 59/253; 59/263; 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never

been served any citation nor has my clients even been served with any kind of citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall*, #163875, a tort action *AGAINST* the state, a result of special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGRIFIED into an eminent domain action by superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumberance. [sic]

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out before that time, the lien perishes. *Sanford v Pond*, (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the

public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Daly in *August, 1979* there were *NO* proceedings before the Superior court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen*, 80 c 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is years, not months or days beyond the statutory fifteen (15) years referenced and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

§ 52-327. Duration and release of attachment liens on real estate

No attachment of real estate shall continue in force as a lien for a longer period than fifteen years after the date thereof unless within said period the action in which such attachment was made has been prosecuted to effect and a judgment lien filed according to law. All attachments of real estate which have expired as a lien by the provisions of this section shall be deemed dissolved and the real estate shall be free from any lien or encumbrance by reason of the same and the town clerk of the town in which such real estate is situated shall, upon the request of any person interested, endorse on the record of such attachment the words "discharged by operation of law." (1949 Rev., § 8026.)

CERTIFICATION

Plaintiff-owner-interested person hereby certifies that a copy of this Request of Dissolution Pursuant to C.G.S. § 52-327 will be – hand delivered to:

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

(To be put in *Simmons v Wetherall*, #163875 file)

Will be mailed, postage prepaid, first class to:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Atty. Tom [illegible]vrne
2-E Farming[illegible]on Commons
790 Farming[illegible]on Ave.
Farmington, CT 06032

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

December 1, 1996

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

Dear Michael,

The attached "Dissolution of Attachments Pursuant to C.G.S. § 52-327" filed under the caption of *Simmons v Wetherall*, #163875 is being submitted to be made part of the #163875 "damages" file.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

LAW OFFICES
BYRNE & BYRNE
2-E FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

THOMAS P. BYRNE
STEVEN E. BYRNE

TELEPHONE
(203) 677-7355

25 November 1996

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Ozzie,

The only activity of which I am aware with respect to a mortgage dated July 3, 1974 as recorded in Volume 55 Page 731 of the East Granby Land Records is notice of a hearing to be held before Arnold Aronson, Judge of the Superior Court, on December 23, 1991 to determine the disposition of funds.

Enclosed herewith is a copy of the notice which I received from the court as well as a copy of a letter to me dated December 19, 1991 from Attorney Walter E. Bass, Jr. I did not attend the hearing of December 23, 1991.

No payments have been received by me on this mortgage.

Very truly yours,

/s/ Thomas P. Byrne
Thomas P. Byrne

TPB: pwb
Encl

———

AUGUSTUS J. SIMMONS VS.
WETHERALL, [sic] DEP COMR CV-70-0163875-S

ALL COUNSEL AND PRO SE PARTIES ARE ORDERED TO APPEAR BEFORE THE HONORABLE ARNOLD ARONSON ON MONDAY, DECEMBER 23, 1991 AT 9 30 A.M. IN ROOM 111 AT HARTFORD SUPERIOR COURT, 95 WASHINGTON ST., HARTFORD, CT. A MOTION BY THE COURT TO DETERMINE THE DISPOSITION OF FUNDS WILL BE HEARD.

A COPY OF SAID MOTION WILL BE SENT TO ALL COUNSEL AND PRO SE PARTIES UNDER SEPARATE COVER.

KAREN PICKER
ASSISTANT CLERK

WALTER E BASS JR
P. O. BOX 289
EAST WINDSOR CT 06088

SUPERIOR COURT
95 WASHINGTON STREET
P.O. DRAWER D, STATION A
HARTFORD, CONNECTICUT 06106

DATED DEC 05, 1991
Illegible

Law Office of
Walter E. Bass, Jr.
P.O. Box 289
Warehouse Point, Conn. 06088
Tel. 623-8688 Juris Number 02450

December 19, 1991

Attorney Thomas Byrnes [sic]
790 Farmington Avenue
Farmington, CT 06032

RE: Augustus J. Simmons
vs.
Horace Wetherell, et al

Dear Attorney Byrnes [sic]:

Please be informed that my office represents several creditors of Mr. Augustus J. Simmons. Please be informed that Judge Arnold Arsonson is holding a hearing on December 23, 1991 at 9:30 a.m. in Courtroom 111 at Hartford Superior Court. Enclosed please find a copy of a Notice which my office has received concerning this hearing. I would like to inform you, that I do believe that you have an interest in this case. I request that you be present at this hearing.

If you have any questions, please feel free to contact my office.

Respectfully,

/s/ Walter E. Bass, Jr.
Walter E. Bass, Jr.

WEBJr./mf

RECEIVED DECEMBER 2, 1996 AT 8:30 A.M.
BY /s/ Laura B. LaFond
ASS'T. TOWN CLERK

Received 12/2, 1996

at 8:30A.M.

Recorded in EAST GRANBY LAND RECORDS

Volume 112 Page 001
By /s/ Laura B. LaFond
Ass't. Town Clerk
Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

APPENDIX "D"

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAWER N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion for Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS: mcd
cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

APPENDIX "E"

CV-70
CASE NO. 16 38 75

AUGUSTUS SIMMONS	:	SUPERIOR COURT
vs.	:	HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL	:	OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consumation [sic] of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occured. [sic]

Attached to this motion are memos from the Treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

[Off – parties have met 11/8/91 and will work out a stipulation to be presented to the court for the withdrawal of all funds and closing of file.

/s/ Aronson, J.J. 11/8/91]

HANDWRITTEN NOTE OF 11/8/91

The court, having heard ther [sic] parties, grants the motion.

_____

Judge

Supreme Court, U.S.
FILED
DEC 14
CLERK

No. 98-769

In The
Supreme Court Of The United States
October Term, 1998

AUGUSTUS J. SIMMONS,
Petitioner
v.
HORACE B. WETHERALL, ET AL.
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS CONNECTICUT DEPARTMENT OF TRANSPORTATION AND CONNECTICUT COMMISSIONER OF TRANSPORTATION (WITH ATTACHED APPENDIX)

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

Augustus J. Simmons
Petitioner(s)

v.

Horace B. Wetherall, et al.
Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS
CONNECTICUT DEPARTMENT OF
TRANSPORTATION AND CONNECTICUT
COMMISSIONER OF TRANSPORTATION
(WITH ATTACHED APPENDIX)

STATEMENT OF THE CASE

This is yet another in along series of actions between the parties and others going back to the year 1963. All these legal actions concerned title to the same three parcels of land situated in the Town of East Granby at the end of Runway 6/24 at the State-owned Bradley International Airport. On January 4, 1978, a final judgment by stipulation of five reopened and consolidated superior Court cases seemed to finally end the previous years of litigation (*Simmons v. Wetherall*, Judgment, Superior Court Docket No. CV 70-163875) (App. A-1).

The Petitioner, represented by counsel and appearing *pro se*, agreed to convey the subject parcels to the State for $385,600. The petitioner subsequently refused to accept the agreed upon compensation, and the State secured a Supplemental Judgment (June 2, 1978) which reaffirmed the January 4, 1978 judgment and vested title to the three parcels in the State and ordered the State to deposit with the Clerk of the Superior Court $385,600 on the Plaintiff's behalf (App. A-6). In 1980, the Connecticut Supreme Court recognized the validity of this stipulated final judgment in *Simmons v. Wetherall,* 180 Conn. 587, 430 A.2d 1296 (1980).

Not content to accept the 1980 final decision of this Supreme Court, the petitioner, by counsel and/or *pro se*, has initiated a series of nineteen state or federal court actions since 1981, all against the State and at times including other defendants.

All of these cases sought in some form or fashion to reverse and overturn the 1978 judgments which were sustained in 1980 by the Connecticut Supreme Court. The chart of litigation prepared by counsel for the Respondents as an aid to the Court (App. A-17) highlights the course of

litigation pursued by the petitioner since the Connecticut Supreme Court's 1980 decision in *Simmons v. Wetherall,* supra.

On April 3, 1992, the Connecticut Appellate Court entered an ORDER enjoining the petitioner from filing appeals or other pleadings in the Appellate Court relating to *Simmons v. Wetherall*, 180 Conn. 587. (*Simmons v. Wetherall*, No. A.C. 10918, Order April 3, 1992, Petition, App. 18). On May 21, 1992, the Connecticut Supreme Court denied the petitioner's Petition For Certiorari to Appeal the 1992 Appellate Court order. (*Simmons v. Wetherall*, No. PSC-91-0549, App. A-27).

The matter presently before the Court arose when the petitioner wrote on January 3, 1997 to the Honorable Marshall K. Berger, Jr., Judge, Hartford Superior Court for resolution of certain motions and filings. (Petition App.5). On January 31, 1997, the Honorable John V. Langerbach, Administrative Judge, Hartford Superior Court, wrote the Petitioner, "In light of the previous rulings in this matter no further hearings will be scheduled as requested in your letter." (Petition App. 9).

On May 8, 1998, in three pending criminal cases, Nos. CR97-106221, CR97-10104930, CR97-0105048, Mr. Simmons filed a "Motion to Disqualify, Dismiss, "Pack the Bags" of the State Attorney's Office Who Are - or Represent - the World Record Trespassers of Thirty-Five (35) Years - and Counting, from Execution Vid Warrants upon Additional Trespassing." (Petition, App. 20). On July 17, 1998, under caption of *Simmons v. Wetherall*, CV 70-163875, Petitioner filed a "Motion to Dismiss for *Fraud, Duress, Deceit, Coercion Rule 1.16* ReDismissing/Discharges." (Petition, App. 10).

The petitioner filed, on August 5, 1998, in the Connecticut Supreme Court a "Motion to the Supreme Court for Permission to File Motion to Dismiss, Decress of Private Counsel Acting as 'the Court,' Denied by the Court Below Due to Previous Rulings by the Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587." (Petition, App.2). On September 15, 1998, the Connecticut Supreme Court entered an order dismissing the petitioner's August 5, 1998 Motion. (Petition, App. 1). It is that order of the Connecticut Supreme Court which is the subject of the instant Petition for Writ of Certiorari.

REASONS FOR DENIAL OF THE PETITION

The Respondents respectfully submit that there are no special or important reasons to support the petition. This is not a case in which the Connecticut Supreme Court has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. Nor is it a case which the Connecticut Supreme Court has decided an important question of federal law that should be decided by this Court or in a way that conflicts with relevant decision of this Court. (See Rule 10, Supreme Court Rules).

ARGUMENT

In April, 1992, the Connecticut Appellate Court, exercising its authority pursuant to the Connecticut Practice Book Sec. 4184, imposed fair, appropriate and reasonable sanctions against the petitioner. These sanctions enjoined the petitioner from the further initiation of frivolous and

wasteful appeals or other proceedings in the Appellate Court (*Simmons v. Wetherall*, No. A.C. 10918 Order April 3, 1992; Pet. Cert. Denied Supreme Court, No. PSC-91-0549, May 21, 1992).[1/]

In filing the various motions subject to this Petition, the Petitioner clearly, intentionally and flagrantly violated the valid and outstanding Appellate Court injunction. The actions taken by the Connecticut Superior Court and the Connecticut Supreme Court in dismissing the motions were the correct and decisive action, given the thirty-year history of this matter and the extraordinary judicial patience that has been displayed and exercised over the last eighteen

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1/ The Petitioner is under a similar prohibition in Federal Court. (*Simmons v. Frankel, et al.*, No. 92-6208, Feb. 23, 1993) (App. A-29). The Court Order stated: in part:

> Not dissuaded by the final judgment granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabrane's order in all respects, this Court warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).

App. A-31to A-32.

years since the Connecticut Supreme Court rendered its decision in *Simmons v. Wetherall*, 180 Conn. 587 (1980).

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

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No. 98-769

In The

Supreme Court Of The United States

October Term, 1998

AUGUSTUS J. SIMMONS,

Petitioner

v.

HORACE B. WETHERALL, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX TO BRIEF IN OPPOSITION

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No. 163875

AUGUSTUS J. SIMMONS of Windsor Locks : SUPERIOR COURT

vs. : HARTFORD COUNTY

HORACE B. WETHERALL of Wethersfield
Deputy Commissioner, Department of Transportation of the State of Connecticut : January 4, 1978

Donald J. Lynch of New Britain
Director of Bureau of Aeronautics
Department of Transportation of the State of Connecticut; and
State of Connecticut

Present Hon. Louis Shapiro, State Trial Referee.

This section by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the First Tuesday of February, 1970, and thence to December 13, 1977 when this action was consolidated with the following cases:

No. 202121	State of Connecticut vs. Augustus J. Simmons
No. 140965	State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons vs. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons vs. Frank C. Parizek, et al;

and said cases were referred to the undersigned and thence to the present time, when the parties appeared and stipulated as follows:

1) That any Judgment of this Court is Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside.

2) That any temporary or permanent injunctive relief ordered by the Court in any of the said aforementioned matters be dissolved.

3) That on or about November 12, 1964, Augustus J. Simmons was the owner of three parcels of land located in the Town of Granby, County of Hartford, adjacent to Bradley International Airport know as Parcels A & C on a map entitled "Property of Anastasia Simmons, East Side - Rainbow Road, East Granby, Connecticut Scale: 1 in = 60 feet. Date October 1964, W.M. Alford Civil Engineer, Windsor, Connecticut A.J.S." which map is on file in the Town Clerk's office in said Town of East Granby together with a third piece of parcel of land known as Parcel D located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford, as described on a map entitled "Town of East Granby - Map showing property of Dept. of Transportation of the State of Connecticut - Rainbow Road - Route 20 Scale: 1 in = 40 feet. Date January, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on; file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Parcel D".

4) That on or about November 12, 1964, the State of Connecticut appropriated Parcels C and D and a portion of Parcel A and became the lawful owner thereof subject to just. compensation due Augustus J. Simmons. The description of said parcels and the portion of Parcel A retained by Augustus J. Simmons is set forth in a Stipulation for Judgment dated January 4, 1978.

5) That fair and just compensation due Augustus J. Simmons from the State for said parcels as of the date hereof, is $385,600 of which the sum of $95,600 is for counsel fees.

6) That all Claims in the above-mentioned cases and this action against individual defendants be denied.

7) That a Judgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases.

The Court, having heard the parties finds that on November 12, 1964, Augustus J. Simmons had the record title to said parcels of land, and the State entered thereon, appropriated the same to its own use,

WHEREUPON, it is ORDERED

1) That any Judgment of his court in Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al;

and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside;

2) That any temporary and/or permanent injunction ordered by the Court in any of the aforementioned consolidated matters be dissolved;

And it is Adjusted; that the State of Connecticut became the lawful owner of said parcels on November 12, 1964 subject to fair and just compensation due Augustus J. Simmons; that said Augustus J. Simmons recover from the State of Connecticut the sum of $385,600 as fair and just compensation for said parcels, without costs; that Judgment for the individual defendants in all of the consolidated cases be entered without costs; and that the files in the consolidated cases, be and are hereby sealed in their entirety and may not be reopened except an order of the undersigned of the Superior Court.

Execution on this judgment is stayed until April 21, 1978 after which time interest shall run at the statutory rate.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

Approved
AUGUSTUS J. SIMMONS

By/s/
Rogin, Nassau, Lassman & Hirtle

State of Connecticut
CARL R. AJELLO
Attorney General

By/s/
Assistant Attorney General

Received June 2, 1978
at 1:48 A.M.

By/s/_____
/Asst. Town Clerk

NO. 16375

AUGUSTUS J. SIMMONS : SUPERIOR COURT

V. : HARTFORD COUNTY

HORACE B. WETHERALL ET AL : JUNE 2, 1978

Present: Hon. Louis Shaprio, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 1992230	Augustus J. Simmons v. Samuel Kannell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Patizek, et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a

stipulation for judgment and judgment dated January 4, 1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligation in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$ 20,000
55/690	A	Jerome H Diamond	Mod. of Mtg.	6/20/74	-----
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A.	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd Nat'l	Attach	6/21/76	$ 2,625
58/95	C	Leonard Allaire, et al	Judg.	3/15/77	$11,104
58/221	C	Patsy Valente, et al	Attach	4/28/77	$ 3,000
58/301	A	Angelo Roncari	Lsc.	5/24/77	-----

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
59/253	C	Patsy Valente, et al	J/L	3/7/78	$ 2,490
59/263	C	Patsy Valente, et al	L/P	3/13/78	$ 3,000
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/233	Portion of Parcel A	Westside Vallet Parking, Inc.	Lsc.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit D is an are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29 from the sum deposited.

4) That pursuant o Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with

proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/Louis Shapiro
Louis Shapiro
State Trial Referee

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side - Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20o 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forth-Six One-Hundredths (860.46) feet to a point;

Thence S 29o 08' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22o 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Seven One-Hundredths (81.24) feet to a point;

Thence S 09o 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20;

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road - Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer - Bureau of Highways January, 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut,

containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 Feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road - Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer - Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut(Dept. of Transportation) as

shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby - Map showing property of Augustus J. Simmons - Rainbow Road - Route 20 - Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons convenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or man-made, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Rights of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further

covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

CASES INITIATED BY AUGUSTUS J. SIMMONS POST 1978 JUDGMENT AND SUPPLEMENTAL JUDGMENT AFFIRMED IN SIMMONS V. WETHERALL 180 CONN. 587 430 A.2d 1296 (1980)

I. **STATE COURT PROCEEDINGS:**

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
1. Simmons v. Wetherall CV-70-163875, et al. Motion for Declaratory Relief Feb. 1984 dismissed Edelberg, J.	3 Conn. App. 672(1985) Affirmed	---	----
2. Simmons v. Burns CV-86-312557 Jan. 1986 dismissed Stoughton, J.	9 Conn. App. 802(1986) Affirmed	201 Conn.815(1986) Pet.Cert.denied	---
3.Simmons v. Burns, et al. CV-87-0334855 Aug. 1987 Dismissed, Norko, J. (removed to U.S. District Court--See H-87-732(JAC)below)	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
4. Simmons v. State of Conn., et al. CV-89-700313 July, 1989 dismissed	24 Conn.App. 801(1991) Affirmed	218 Conn. 901(1991) Pet. Cert. denied	90-1807 Cert. denied Oct.7, 1991
5. Simmons v. State of Conn. CV-90-701038 May 1990 dismissed P.B.Sec. 111 sanctions N. O'Neill, J.	---	---	---
6. Simmons v. Wetherall CV-70-163875, et al. Motion of Referral to Referee	A.C. 10918 Orders (unreported) 1.Appeal Dismissed 2.Sanctions Imposed (injunction) April 3, 1992	222 Conn. 906(1992) Pet.Cert. Denied	---
7. Simmons v. Frankel CV-92-05053988S December 1991 Dismissed Sanctions imposed (injunction) May 1992, Satter, J.	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
8. Simmons v. Wetherall CV-70-163875, et al. Motion for Impeachment December, 1995 denied Sheldon, J.	A.C. 15481 Order dismissed (sua sponte) March 20, 1996	Cert. Denied May, 1996	
9. Simmons v. Wetherall CV-70-163875 Plaintiff's Request for Hearings On Various Motions - Jan. 3, 1997 Denied, Jan. 31, 1997, Langenbach, J.			
10. State of Connecticut v. August J. Simmons CR97-106221, CR97-0104930, CR97-0105048 Motion to Disqualify Dismiss, "Pack the Bags" Of the State Attorney's Office - May 8, 1998 Denied			
11. Simmons v. Wetherall CV-70-163875 Plaintiff's Motion to Dismiss-July 8, 1998 Denied			
12. Simmons v. Wetherall CV-70-163875	---	HHD-CV-70-163875 Order Dismissed Sept. 15, 1998	Pet. Cert. Pending Dec., 1998

II. **FEDERAL COURT PROCEEDINGS:**

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
1.Simmons v. Powers		
H-81-778 (JAC))		
1981)		
)		
2.Simmons v. United States of America, et al.		
H-83-225 (TEC))		
1983)		
Consolidated		
-dismissed	83-6257(1983)	83-1833
Aug. 16, 1983	Affirmed	Cert. denied
3.Simmons v. United States of America, et al.		
H-85-45 (MJB)	8506087 (1985)	---
1985	Affirmed	
Dismissed	notice of future sanctions	
4.Simmons v. Burns, et al.		
H-87-732 (JAC)	88-6093(1988)	88-693
1987	Affirmed	Cert.
Dismissed	Sanctions	denied
plaintiff enjoined	imposed	Nov. 28,
from further		1988
federal district court actions		

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
5.Simmons v. Frankel, et al.		
	92-6208(1993)	92-1762
292 CV 00395(PCD)	Affirmed	Cert.
June 1992 Dismissed	Sanctions	denied
Sanctions	imposed	Oct. 4,
imposed - $2,000		1993
6.Simmons v. Hinson, et al.		
394 CV 00778(AHN)	94-6156(1994)	94-1651
May 1994	Affirmed	Cert.
Dismissed with	Sanctions	denied
prejudice	imposed	June 5,
	-$5,000	1995
7.Simmons v. Burns		
395 CV 02198(RNC)	96-7336 (1996)	
October 1995	Appeal dismissed,	
Dismissed	(sua sponte)	

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-91-0549

Augustus J. Simmons

v.

Horace Wetherell

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court, it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/Alan M. Gannuscio
ASSISTANT
CLERK-APPELLATE

Dated: May 21, 1992

Notice to: 5/21/92
Clerk, Superior Court, Hartford - 163875
Clerk, Appellate Court
Lasky & Witt
Augustus J. Simmons, pro se
Arnold K. Shimelman, Assistant Attorney General

Otto P. Witt in support of petition; Arnold K. Shimelman, Assistant Attorney General, in opposition.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Cirucit, held that the United States Courthouse in the City of New York, on the 23rd day of February, one thousand nine hundred and ninety three.

Present:

Honorable John M. Walker, Jr.,
Honorable Joseph M McLaughlin,
Circuit Judges
Honorable Charles L. Brieant,
*Chief District Judge**

AUGUSTUS J. SIMMONS,
Plaintiff-Appelant

v.

ORDER
No. 92-6208
(Filed Febr. 23, 1993)

EMIL H. FRANKEL, Commissioner of Transportation, BARRY L. HARRIS, Administrator, Federal Aviation Administrator, HENRY J. HATCH, General Chief Engineer U.S. Army Corps. of Engineers, JOHN J. BARTIZEK, District

---

*Chief Judge Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

Clerk, Metropolitan District Commission, UNITED STATES OF AMERICA, STATE OF CONNECTICUT, JOHN J. COLLINS, Lt. Col., Administrator, FAA,

Defendant-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came to heard [sic] on the transcript of record from the United States District Court for the District of Connecticut (Dorsey, J.) and was argued by appellant, while counsel for appellees relied on their submissions.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be it hereby is AFFIRMED, and appellant is assessed doudble court costs.

August J. Simmons, *pro se*, appeals from an order of the United States District Court for the District of Connecticut (Dorsey, J.), dismissing his complaint *sua sponte* and ordering Simmons to pay $2000 in fines.

On June 5, 1992, Simmons brought an action, pursuant to 42 U.SC. § 1983, alleging various constitutional violations arising from Connecticut's acquisition of land owned by Simmons. the district court concluded that Simmons was attempting to reassert federal constitutional and statutory claims that were fully adjudicated in prior proceedings in violation of an injunction issued against him,

and dismissed his complaint *sua sponte* on July 14, 1992. The court also ordered Simmons to pay fines in the amount of $1000 to the State of Connecticut and $1000 to the United States.

The long history of this litigation began in 1964, when the State of Connecticut attempted to condemn property in East Granby, Connecticut, then owned by the Simmons's family, to expand what is now the Bradley International airport. Simmons filed various state and federal actions, later consolidated in Connecticut Superior Court, alleging that the State illegally occupied portions of his land and challenging the State's attempt to gain title to the property. On January 4, 1978, a judgment was entered, pursuant to a stipulation betwen the parties, providing that the State would take title to certain parcels of Simmons' land, in return for which the State would pay Simmons $385,000. The stipulation further provided that the "judgment entered in this matter [shall] be a full and final settlement between the parties of any an all claims contained in the above consolidated cases." Howerver, six months later Simmons moved to open the judgment claiming ineffective assistance of counsel. This request was denied and the denial was affirmed on appeal. *Simmons v. Wetherall*, 180 Conn. 587 (1980) (per curiam).

Not dissuaded by the final judgemnt granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabranes' s order in all respects, this Court

warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).

Despite this Court's attempt to stem the flow of vexatious litigation by Simmons, we are confronted once again with an attempt by him to litigate a matter barred by resjudicata. Notwithstanding Simmons's attempt to circumvent the injunction by changing the named defendants, the instant complaint clearly relates to Simmons's ownership of the East Granby land. Thus, Simmons has violated Judge Cabranes's injunction. Furthermore, even without the injuction, Judge Dorsey's dismissal of the complaint *sua sponte* would be affirmed based on res judicata grounds.

Both the state and federal defendants have asked the district court to impose snctions on Simmons in order to detr him from continuing his attempts to reopen this litigation. *Pro Se* litigants are subject to sancitons under Fed. R. Civ. P.11. *See Maduakolam v. Columbia Univ*, 866 F.2d 53, 56 (2d Cir. 1989). Furthermore, this Court has not hesitated to impose sanctions on *pro se* litigants when they become particularly vexatious. *See Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992) (upholding sanction of $93,350 against vexatious plaintiff).

The district court's order dismissing *sua sponte* Simmons's complaint and imposing $2,000 in fines is hereby

AFFIRMED. Furthermore, we hereby assess double court costs against Simmons psursuant to Fed.R.App.P.38.

/s/ John Walker
Hon. John M. Walker, JR.,
U.S.C.J.

/s/ Joseph M. McLaughlin
Hon. Joseph M. McLaughlin,
U.S.C.J.

/s/ Charles Brieant
Hon. Charles L. Brieant,
U.S.D.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of February, one thousand, nine hundred and ninety three.
Present:

Honorable John M. Walker, Jr.,

Honorable Joseph M. McLaughlin,
Circuit Judges,

Honorable Charles L. Brieant,
Chief District Judge.

AUGUST J. SIMMONS,
Plaintiff-Appellant,

v.

ORDER
No. 92-6208
(Filed Febr. 23, 1993)

EMIL H. FRANKEL, Commissioner of Transportation, BARRY L. HARRIS, Administrator, Federal Aviation Administrator, HENRY J. HATCH, General Chief Engineer U.S. Army Corps. of Engineers, JOHN J. BARTIZEK, District Clerk, Metropolitan District Commission, UNITED STATES OF

*Chief Judge Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

AMERICA, STATE OF CONNECTICUT,
JOHN J. COLLINS, Lt. Col,
Administrator, FAA,
Defendant-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came to heard on the transcript of record from

Dismissed sua sponte.

Supreme Court, U.S.
FILED
JAN 6 1999
OFFICE OF THE CLERK

No. 98-769

(3)

In The

Supreme Court of the United States

October Term, 1998

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Connecticut

REPLY BRIEF

AUGUSTUS J. SIMMONS
Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

10 pp

ARGUMENT

#1 JURISDICTION

The Supreme Court of Connecticut in *Case v. Bush*, 93 Conn. 550, 552, 106 Atl. 822 quotes the United States Supreme Court on Jurisdiction:

"The Supreme Court of the United States defines Jurisdiction as the 'right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: First the court must have cognizance of the class of cases to which the one to be adjudged belongs; Second, the proper parties must be present; and Third, the point decided must be in substance and effect within the issue.' *Reynolds v. Stockton*, 140 U.S. 254, 268, 11 S. Ct. 773." Jurisdiction of the subject matter is not alone "cognizance of the class of cases to which the one to be adjudged belongs." In addition, "The point decided must be in substance and effect, within the issue."

Jurisdiction is conferred by statute, not by decisions of the court. *McDowell v. United States*, 159 U.S. 596, 598-599, 16 S. Ct. 111, 40 L.Ed 271; *Leary v. United States*, 268 F.2d 317, 320 C.A. 7th Affirmed, 363 U.S. 335, 80 S. Ct. 1084, 4 L.Ed 2d 1254.

The parties cannot confer jurisdiction of the subject matter by consent, waiver, silence or agreement. *Simmons v. State*, 160 Conn. 492 (1971).

That there is no principle better settled than that a judgment or decree cannot be entered in the absence of pleadings upon which to found the same. *Lilly v. Claypool*, 59 W. Va. 130, 133, 53 S.E.22. Under Connecticut citations, any judgment should conform to the pleadings, the issues, and the prayers for relief. *Brill v. Ulrey*, 159 Conn. 371, 374, 269 A.2d 267; *Verraster v. Tynon*, 152 Conn. 645, 648, 211 A.2d 150. That a judgment or decree cannot be rendered if pleading on which to found it are lacking, *Strimska v. Yates*, 158 Conn. 179, 185; *Howarth v. Northcott*, 152 Conn. 460, 466.

The Connecticut Supreme Court had occasion to discuss this principle in *New Haven Sandblast Co. v. Driesbach*, 104 Conn. 322, 330, 133 A.99. In that case, the court stated:

A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet I cannot doubt that, upon general principles, such a defect must avoid judgment.

133 A. at 102 (citation omitted). The court also stated quoting Black on judgments (2d Ed) Vol I, § 215:

Besides jurisdiction of the person of the defendant and of the general subject matter of the action, it is necessary to the validity of the judgment that the court should have had jurisdiction over the precise question which its judgment assumes to decide, or of the particular remedy or relief which it assumes to grant * * * and third, the point decided must be in substance and effect within the issue.

#2 *SIMMONS V. WETHERALL*, #163875

Special Act #170 (1969) (*Simmons v. Wetherall* #163875) is not a statute of general application. It is designated by the state as a special act and is printed among the special acts. Its application is in terms restricted to damages. Neither the private attorneys acting as "The Court" nor the Supreme Court of Connecticut acted within their authority, for no valid taking by eminent domain was given by this act, that is not a "public" act.

Neither in form or substance does this act resemble the ordinary grant of the exercise of the power of eminent domain. Its purported grant of authority to acquire land for Federal-Aid/Federal Projects was wholly inoperative.

Courts may not "read into clearly expressed legislation provisions which do not find expression in its words". *Brunswick Corp. v. Liquor Control Commission*, 184

Conn. 75, 81, 440 A.2d 792 (1981), quoting *International Business Machines Corp. v. Brown*, 167 Conn. 123, 134, 355 A.2d 236 (1974).

When the language used in a statute is clear and unambiguous, its meaning is not subject to modification by construction. *State v. Simmons*, 155 Conn. 502, 504, 234 A.2d 835; *Hurlbut v. Lemelin*, 155 Conn. 68, 73, 230 A.2d 36. It is not the function of the courts to read into clearly expressed legislation provisions which do not find expressions in its words; *Lenox Realty Co. v. Hackett*, 122 Conn. 143, 150; nor is it a court function to substitute its own ideas of what might be a wise provision in the place of a clear expression of the legislative will. *Connelly v. Bridgeport*, 104 Conn. 238, 249, 132 A.690. When Legislation contains a specific definition, the courts are bound to accept that definition, *Danbury v. Corbett*, 139 Conn. 379, 384, 94 A.2d 6.

To hold otherwise, then the courts would be legislating by adding a new class to the coverage of this act which proclaims its limited scope. This courts cannot do. [I]t is up to the legislatures, not courts, to decide on the wisdom and utility of legislation. . . . [C]ourts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws, *Ferguson v. Skrupa*, 372 U.S. 726, 728-30, 83 S. Ct. 1028, 10 L. Ed 2d 93 [1963]. . . . *DuPont v. Planning & Zoning Commission*, 156 Conn. 213, 220, 240 A.2d 899 (1968).

As was said by the court in *Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L. Ed. 914: The courts must act judicially in all things, and cannot then transcend the power conferred by law. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. The judgments mentioned, given in the cases supposed would not be merely erroneous; they would be absolutely void, because the court in rendering them would transcend the limits of its authority in those

cases. See also *Standard Oil Co. v. Missouri*, 224 U.S. 270, 32 S. Ct. 406, 56 L. Ed. 760.

#3 WRITTEN STATEMENT OF COMPENSATION

The decision of the Connecticut Supreme Court (180 Conn. 587), without any written statements of compensation to the court, the owner, indispensable parties, town clerk is in conflict with *City of San Jose v. Great Oaks Water Co.*, 237 Cal. Rptr. 845 (Cal. App. I Dist. 1987), where a public entity may acquire property by eminent domain only if it first makes offer to property owner and provides him written statement explaining way offer is just, establishes "mandatory" requirements which must be observed by any public entity planning to initiate eminent domain proceedings through resolution of necessity.

The Supreme Court of Connecticut has ruled in *Karp v. Urban Redevelopment Comm. of Stamford*, 162 Conn. 525, 294 A.2d 633 That the filing of a written statement of compensation with the Clerk's Office of the Supeiror Court *did not* originate a civil action, and the supporting cite – *Simmons v. State*, 160 Conn. 492, 494 n, 280 A.2d 351.

#4 APPRAISALS

The decision of the Connecticut Supreme Court (180 Conn. 587) for the taking of Federal-Aid/Federal Project real property without any appraisals to establish fair market value is in conflict with *Bethune v. United States*, 376 F. Supp. 1074 (1972) wherein the county which had commenced actions to condemn property within area proposed to be taken for a public park would be enjoined from further prosecution of the actions until it had complied with the federal statutes requiring that the acquiring agency appoint an appraiser who shall provide to owner of land an opportunity to accompany appraiser during his inspection of the property and until county had provided substantial and effective relocation assistance to property owners, uniform relocation assistance

and real property acquisition policies act of 1970 §§ 101(3, 6, 8) 205(a, c)(c)(2-4), 301(1-3, 7), 42 U.S.C.A. §§ 4601(3, 6, 8), 4625(a, c)(2-4) 4651(1-3, 7).

The Supreme Court decision is in conflict with 49 C.F.R. § 24.102 and *State of Missouri ex rel. Wetherby-Adv. Co. v. Frank Conley*, 527 S.W. 2d 334.

#5 FRAUD UPON THE COURT

Where, the Attorney General's Office submits exhibits to the court in the appendix (Exhibit A-6) and intentionally, in bad faith, delete, eliminate Vol. 59, pages 661-662 of the Town of East Granby land records that contains a citation that was never served upon the parties listed with a return day of the first Tuesday of July, 1978 and where there was no return of service to the court of competent jurisdiction and at Vol. 59, p. 668 contains a stamp and seal of the Clerk of the Superior Court (Thomas H. Abraham) dated June 5, 1978 at Vol. 59, p. 668, that is also eliminated from the Exhibit A-6 of Respondents Brief to shield, shelter, cover-up the decision of the Connecticut Supreme Court, (180 Conn. 587), where there were no pleadings before the Superior Court, is, fraud upon the court.

The intentionally deleted citation, and court stamp, are hereby incorporated as part of Plaintiff's Reply Brief.

Respectfully submitted,

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlon Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allsire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne,

Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allsire, Patsy Valente, Westside Vallet Parking, Inc., David B. Salzman, and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF
TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney – 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT B (Continued)

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
) ss.
Hartford County)

(SEAL)

Received June 5, 1978
at 4:01 P.M.
By /s/ Marilyn L. Barstow
Asst. Town Clerk.

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing on be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, of said County, this 5th day of June 1978

/s/ Thomas H. Abraham
CLERK